

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION TWO

THE PEOPLE,
Plaintiff and Respondent,
v.
JASON PERRY CASSELL,
Defendant and Appellant.

A132349 & A133449
(Sonoma County
Super. Ct. No. SCR591108)

Jason Perry Cassell appeals from two sentencing orders following a negotiated disposition whereby his pleas of no contest to nine counts of first degree, residential burglary left him presumptively ineligible for probation (*id.* § 462; Cal. Rules of Court, rule 4.413(c)).¹ Denied probation and sentenced by the Honorable Gary A. Medvigy on June 7, 2011 (the June hearing), to 12 years, eight months in prison, Cassell appealed (A132349). He also sought a recall of sentence in the trial court, claiming that his was excessive as compared with those in other cases (former § 1170, subd. (d)). Judge Medvigy held resentencing on October 4 and 6, 2011 (the October hearing), and reduced the sentence, nunc pro tunc, to June 7, to 10 years, but leaving the original sentence otherwise unchanged (apart from updating credits). Cassell appealed once more (A133449), and we ordered the appeals consolidated for briefing, argument and decision.

¹ All undesignated section and rule references are to the Penal Code and the California Rules of Court.

Cassell claims that the court (1) misapplied the criteria for finding a case *unusual* so as to override probation ineligibility, (2) relied on unsupported eligibility factors, and (3) lacked a rational basis for not running the unmodified terms concurrent as well. We affirm the sentence, finding no abuse of discretion.

BACKGROUND

The disposition resolved a 17-count information charging crimes allegedly committed from September 14 through October 25, 2010. The residential burglaries to which Cassell pled no contest occurred on separate dates, against separate victims, on September 14 and 30, and October 4, 5, 11, 14 and 15. All were in the Bennett Valley area of Santa Rosa, and characterized by forced entry through a door or window when no one was home, in daylight or early evening hours. Bedrooms and bathrooms were ransacked, and jewelry always taken, often along with other items. No fingerprints were found. The losses, according to a later restitution order, were mostly between \$1,000 and \$5,500, but with two victims losing \$26,000 and \$27,900 respectively.

Counts dismissed in the plea agreement, but with a *Harvey* waiver allowing use of their facts for sentencing (*People v. Harvey* (1979) 25 Cal.3d 754), included one count of theft-related conspiracy (§ 182, subd. (a)(1)), three counts of receiving/selling stolen property (jewelry in each, plus a handgun, camera, and laptop in one) (§ 496, subd. (a)), two counts of commercial burglary (of Whistle Stop businesses) (§ 459), and two counts of grand theft (of currency) (§ 487, subd. (a)). Pending cases dismissed, with the same waiver, were one for speeding and driving without a license (Veh. Code, §§ 22350, 14601.1, subd. (a)), and one for prowling, drug and paraphernalia possession, and drug possession for sale (§ 647, subd. (h); Health & Saf. Code, §§ 11350, subd. (a), 11364, subd. (a), 11378).² No fixed prison term was specified, but the understood maximum was 16 years, eight months.

² In the prowling/drug incident of September 2010, Rhonert Park police officers called to an apartment complex regarding a suspect looking into windows and checking doors of parked cars arrived to see Cassell notice them and slip into a dumpster area. Hearing something metal thrown into the dumpster, they found in it “a tangle of jewelry,”

A 26-count amended felony complaint charging those and other offenses had also named codefendants Ryan Brown and Jennifer Hedrick, with some counts only against them. In dispositions before the filing of the information, Brown and Hedrick were each granted three years' formal probation, with restitution ordered, for single-count convictions of receiving/selling stolen property (Brown) and first degree burglary (Hedrick). Ruben Reyna, a fourth defendant, also received probation, for one count each of those same offenses.

Cassell was arrested on October 24, days after the burglaries. Sheriff's detectives knew that he had possessed a bag of suspected stolen jewelry when arrested for prowling and drug possession the month before (see fn. 2, *post*), and that a roommate said Cassell had assaulted him and been burglarizing houses and stealing jewelry. They then found jewelry, antique coins, and other suspected loot from the burglaries in probation searches of two Santa Rosa residences. The detectives located Cassell at a room at the Hillside Inn in Santa Rosa and, first finding just his girlfriend Hedrick and a two-year-old child there, waited for him to arrive before searching. They found drugs, drug paraphernalia, cash, and many items taken in the burglaries. Cassell had fresh track marks on his inner arms and said he had used drugs five hours earlier. Then Reyna drove up and entered the room, having jewelry he said he got from Cassell. The vehicle, registered to Hedrick, had more suspected stolen jewelry, and all three of the suspects were arrested. Reyna implicated Cassell in the burglaries and in twice pawning jewelry at a Whistle Stop store. Reyna also said he and Hedrick had dropped Cassell off earlier that day, gone to visit a friend, and returned to pick up Cassell, who was carrying a shirt full of jewelry.

narcotics paraphernalia, a bottle of pills later identified as Lorazepam (see Health & Saf. Code, § 11057, subd. (d)(16)), and methamphetamine. Cassell claimed the pills were "Vicodin, for which he had a prescription," and denied that the methamphetamine was his. He said he got the jewelry from his girlfriend's car, parked there in the lot. The girlfriend—Hedrick, also charged in this case—did live in the apartment complex, but denied the jewelry was hers and said she had not seen Cassell in two days and wanted nothing to do with him. Cassell later changed his story, saying he got the jewelry "from a friend three days earlier who 'dumpster dived' at Target."

Cassell admitted burglarizing homes in the Bennett Valley area to support an addiction to Oxycontin. He showed officers places he had burglarized, described what he had taken, and said he chose nicer, isolated areas to avoid discovery. He claimed that he was the only one who entered the houses; walked or recruited friends to give him rides; chose houses where he thought no one was home; knocked before forcing entry with his shoulder and, if anyone answered, concocted a story about being at the wrong address; was careful not to leave fingerprints; used no gloves but covered his hands with his shirt or grabbed with his knuckles; and focused on bedrooms and bathrooms in a search for jewelry, personal valuables, and prescription drugs. He said he had others pawn the loot for him, since he had no valid identification. He also conceded taking some items of purely sentimental value, and felt that others may have burglarized the same homes he did, although not at the same time.

Cassell was on a “conditional sentence” (*People v. Glee* (2000) 82 Cal.App.4th 99, 104 [grant of informal or summary probation in a misdemeanor case]) at the time of these burglaries and continued the burglaries despite a found violation and reinstatement on September 21, 2010, a week after their onset. He expressed deep remorse for the crimes and their effect on his victims. He said he was “ ‘technically homeless,’ ” and unemployed, having lost a job at a winery due to his drug abuse.

Cassell was 32 years old at sentencing and claimed a long history of substance abuse that included regular consumption of liquor by the third grade. But he claimed to have stopped drinking in 2009 and that his problem was drug abuse, which started with early marijuana use, and progressed to prescription drugs, starting with pain medication he had as a child for chronic migraine headaches. By high school, he had moved from abuse of Tylenol with Codeine, to Vicodin, Norco and morphine. After high school, until his insurance ended at age 25, he abused Tramadol and Klonopin prescribed for attention deficit hyperactivity disorder, and afterward got the drugs illicitly. By age 27 or 28, “ ‘things started going downhill’ ” and he began consuming and injecting Oxycontin, also selling it to support his habit. During the months of the burglaries, he said, he used veterinary syringes to inject large quantities of Oxycontin daily. He had also used LSD,

Ecstasy, cocaine, and psilocybin mushrooms since high school, started smoking, snorting and injecting methamphetamine in early 2010, and last took Ecstasy about two days before his arrest.

Cassell acknowledged needing substance abuse treatment and that “he would become physically ill if he did not consistently use drugs.” By sentencing, he reported having been rejected by Delancey Street Foundation but accepted to Jericho Project and “TASC” for services. A case manager with TASC, he said, recommended six months of residential treatment at Turning Point, a local program, followed by intensive outpatient treatment, and TASC aftercare.

The presentence report for the June hearing (report) noted Cassell’s presumptive ineligibility for probation, but suggested that the court “may wish to consider,” toward unusual circumstances overriding ineligibility (rule 4.413), that the crimes were “in part due to an underlying substance abuse issue” and that Cassell would likely benefit from related treatment and counseling required as a condition of probation. The report then explored ordinary factors governing suitability (rule 4.414), and concluded in the end that Cassell was “a wholly unsuitable candidate for probation supervision.” It next examined criteria for concurrent or consecutive sentencing (rule 4.425), and urged consecutive terms. It recommended a prison term of 14 years, eight months, utilizing a four-year midterm as the base term. There were letters from victims, and Cassell, his family, and other supporters. A defense statement in mitigation urged finding unusual circumstances, granting probation under the ordinary eligibility criteria, and running some terms concurrent.

Judge Medvigy heard testimony from two devastated victims, the reading of a letter from a third, and then argument and a statement by Cassell. For reasons detailed further on in this opinion, the judge rejected probation and imposed a sentence of 12 years, eight months, comprised of a mitigated two-year base term (citing relative youth and a minimal record) plus a consecutive subordinate term of 16 months (one-third the midterm; § 1170.1, subd. (a)) for each of the other eight counts.

In his motion to recall the sentence, Cassell claimed disparity compared with the probation granted Hedrick, Brown, and Reyna for some of the offenses, plus sentences for some unrelated residential burglaries. Judge Medvigy heard the matter on October 4 and 6, 2011 (the October hearing), and was not persuaded that Cassell’s sentence was excessive, given the facts. Nevertheless, citing a desire to “bring it in line” with the other cases, “pure compassion,” and the relatively unbroken period of time over which the nine burglaries were committed, the judge reduced the sentence by two years and eight months, to 10 years total. He did this by running two of the subordinate terms (counts IX and X) concurrent, deeming them a single period of aberrant behavior, and otherwise incorporating his reasons from the June hearing.

DISCUSSION

Denial of Probation

We consider together the arguments about probation. Cassell’s pleas of no contest to burglary of an inhabited dwelling left him statutorily ineligible for probation unless the court found and articulated “unusual circumstances” such that the interests of justice were best served by probation (§ 462), a finding guided by rule 4.413(c).³ “Under rule 4.413,

³ Section 462 provides: “(a) Except in unusual cases where the interests of justice would best be served if the person is granted probation, probation shall not be granted to any person who is convicted of a burglary of an inhabited dwelling house [¶] (b) If the court grants probation under subdivision (a), it shall specify the reason or reasons for that order on the court record.”

Rule 4.413(c) provides in pertinent part: “The following facts may indicate the existence of an unusual case in which probation may be granted if otherwise appropriate:

“(1) *Facts relating to basis for limitation on probation*

“A fact or circumstance indicating that the basis for the statutory limitation on probation, although technically present, is not fully applicable to the case, including:

“(A) The fact or circumstance . . . is, in this case, substantially less serious than the circumstances typically present in other cases involving the same probation limitation, and the defendant has no recent record of committing similar crimes or crimes of violence; and

“[¶] . . .

the existence of any of the listed facts does not necessarily establish an unusual case; rather, those facts merely ‘*may* indicate the existence of an unusual case.’ (Rule 4.413(c), italics added.) This language indicates the provision ‘is permissive, not mandatory.’ [Citation.] ‘[T]he trial court may but is not required to find the case unusual if the relevant criterion is met under each of the subdivisions.’ [Citation.]” (*People v. Stuart* (2007) 156 Cal.App.4th 165, 178 (*Stuart*)). We review such a finding for abuse of discretion, mindful of the trial judge’s broad discretion, that we must affirm if reasonable people might disagree, and that we have no authority to substitute our own judgment for that of the trial judge. (*Id.* at pp. 178-179.)

But an *eligibility* finding does not alone allow a grant of probation. The judge must also find *suitability* for probation under the separate criteria of rule 4.414 (*People v. Superior Court (Dorsey)* (1996) 50 Cal.App.4th 1216, 1229; cf. *People v. Carbajal* (1995) 10 Cal.4th 1114, 1120), another ruling committed to the trial court’s discretion and reviewed for abuse of discretion (*People v. Kronemyer* (1987) 189 Cal.App.3d 314, 364-365). Since both rulings must be made in order to grant probation (*Stuart, supra*, 156 Cal.App.4th at p. 178), a defendant attacking a denial of probation, when he or she was presumptively ineligible, must show two abuses of discretion, each by different criteria. (*People v. Superior Court (Du)* (1992) 5 Cal.App.4th 822, 831.)

Cassell analyzes the rule 4.414 criteria for the *suitability* ruling but, in an apparent effort to shortcut analysis of the *eligibility* ruling, argues that the court either

“(2) *Facts limiting defendant’s culpability*

“A fact or circumstance not amounting to a defense, but reducing the defendant’s culpability for the offense, including:

“(A) The defendant participated in the crime under circumstances of great provocation, coercion, or duress not amounting to a defense, and the defendant has no recent record of committing crimes of violence;

“(B) The crime was committed because of a mental condition not amounting to a defense, and there is a high likelihood that the defendant would respond favorably to mental health care and treatment that would be required as a condition of probation; and

“(C) The defendant is youthful or aged, and has no significant record of prior criminal offenses.”

(1) implicitly *found* eligibility (since it went on to consider appropriateness criteria) or (2) *misunderstood* the criteria, and so failed to properly exercise its discretion and must be given a chance to do so on remand. We reject both of the enumerated arguments and, finding that the court did properly reject eligibility, uphold the probation denial on that basis, without need to address the suitability criteria.

The record does not show that Judge Medvigy implicitly found eligibility under rule 4.413 or was confused about its criteria. The judge’s remarks at the June 7 hearing began: “Now under rule 4.413(a), regarding probation preclusion and limitation, there is nothing noted in (a). (B), the defendant’s conviction is in any one of the burglaries you are statutorily limited from receiving a grant pursuant to 462 of the Penal Code. Not precluded, but certainly the [L]egislature has put hurdles in your path where the Court has to find it is in the interest of justice and that there are unusual circumstances. [¶] I do acknowledge that you were under the influence of many drugs during this period of time. There is a substance abuse issue. There is certainly a likelihood that you would benefit from treatment and counseling, if the Court was to grant probation.” Those remarks tracked this part of the report: “PROBATION PRECLUSIONS/LIMITATIONS – RULE 4.413: (a) None noted.^[4] (b) The defendant’s conviction in any one of the instant offenses of residential burglary statutorily limits him from receiving a grant of probation pursuant to 462 PC. (c)(Rule 4.408) The Court may wish to consider that the defendant committed the offenses in part due to an underlying substance abuse issue, and that there is a likelihood he would benefit from related treatment and counseling that would be required as a condition of probation.”

The judge did immediately go on to discuss the rule 4.414 *suitability* factors, as well as aggravating and mitigating factors (rules 4.421 & 4.423), and factor affecting consecutive or concurrent sentences (rule 4.425), before making a final ruling, but this does not mean that the judge confused or misapplied any of those rules. The report did

⁴ “None noted” is a bizarre reaction to rule 4.413(a), which simply states that “[t]he court must determine whether the defendant is eligible for probation,” but Cassell claims no harm in that regard.

exactly the same thing before offering a final recommendation, and even the defense statement in mitigation examined all of the various rules in that order. Nothing prevented the court from looking at the whole picture before parsing the components, and there were practical reasons for doing this. One was some nuanced factual overlap. For example, the judge said, as to eligibility, that “[t]here is a substance abuse issue” and “certainly a likelihood that you would benefit from treatment and counseling” attending probation, and said, as working against suitability, that there was “a strong likelihood” Cassell would return to substance abuse and pose a danger to the property and lives of others (rule 4.414(b)(8)). The court rejected at the start Cassell’s age of 32 as “young” in this case (cf. rule 4.413(c)(2)(C) [“youthful or aged, and has no significant record of prior criminal offenses”]; fn. 3, *ante*), yet cited in part his “age” and lack of “significant prior record” in selecting a mitigated two years for a base term (cf. rule 4.423(b)(1) [“insignificant record of criminal conduct”]). In the end, the court ruled: “So I have taken everything into consideration, and all the responsibilities this court has in arriving at an appropriate sentence. I do see that you have applied for treatment and have secured it, but in good conscience, based on everything involved in this case and the enormity of this case, it would not be in the interest of justice to grant you probation. Probation will be denied.”

We assume that “[r]elevant criteria enumerated in these rules . . . will be deemed to have been considered unless the record affirmatively reflects otherwise” (rule 4.409), and while Cassell cites a rare example where a record did affirmatively reflect otherwise (*People v. Marquez* (1983) 143 Cal.App.3d 797, 802-804 [judge said it did not want to send “this young man,” with minor prior record, to prison or CYA but that it could find no unusual circumstances, clearly unaware of the youth-and-minimal-record provision of former rule 416(f) (current rule 4.413(c)(2)(C))], but that is not the case here. Rather, the judge’s allusion to the language of the ineligibility statute (§ 462, subd. (a) [“[e]xcept in unusual cases where the interests of justice would best be served if the person is granted probation”]; fn. 3, *ante*), removes any doubt that the court found, at least in part, that

there were *not* unusual circumstances for eligibility purposes. (Cf. *People v. Serrato* (1988) 201 Cal.App.3d 761, 763.)

Cassell does not directly claim lack of substantial evidence for the finding but writes that “the Court agreed that there were two factors, set out in rule 4.413(c)(2)(B) . . . : ‘There is a substance abuse issue. There is certainly a likelihood that you would benefit from treatment and counseling, if the Court was to grant probation.’ ” Cassell miscounts. That remark by the court was not as to “two factors,” but a single factor with two subparts: “The crime was committed because of a mental condition not amounting to a defense, *and* there is a high likelihood that the defendant would respond favorably to mental health care and treatment that would be required as a condition of probation[.]” (Rule 4.413(c)(2)(B), italics added.)

Also, we do not equate the remark with a finding of an unusual circumstance within the meaning of the rule. It is hardly “unusual” that someone commits a burglary in order to support a drug habit, and the defense statement in mitigation recognized this with the understatement: “Committing residential burglaries to allow the perpetrator to feed a drug habit is not a new story before this court.” The judge also found “a substance abuse issue,” but without calling it a “mental condition” that caused the commission of the crime, and the record supports this. The report noted that “Mr. Cassell asserts that he was under the influence of controlled substances each and every time he committed these crimes,” observed that it was “deeply unfortunate that he allowed his longstanding drug abuse to continue unchecked when he was fully aware of the severity of his addiction,” and concluded only that “an argument *could be made* for the statutory probation limitation . . . to be overridden” (italics added), while recommending that probation in fact be *denied*. The report also called “troubling” Cassell’s impulse-sounding accounts that he brought no tools, conducted no surveillance, and used no gloves; for one of the victims had been away from his home for a mere 45 minutes, and a neighbor had reported seeing a woman in a vehicle “possibly acting as a lookout.” “It is difficult to believe,” the report notes, “that an individual could be under the influence of multiple narcotic substances, yet be so thorough and deliberate in his ransacking of bedrooms and

bathrooms, never once leaving a fingerprint at the scene.” The judge adopted that view, for he explained to Cassell, on the subject of planning and sophistication: “[W]hether you subscribe to the position that you went to great lengths to make sure no one was present to protect them or yourself or to merely be able to accomplish the crime with as much ease as possible, I certainly lean towards the position that this was a fairly sophisticated set of circumstances where despite your forthrightness in every other aspect of this case, [you] minimized the surveillance and other aspect[s] of this case, minimized the surveillance and planning that took place. And certainly in one of the victim’s representations in the probation report the home was only vacant for about 45 minutes, which showed an acute sense of striking at the right appropriate moment that you could invade someone’s home.”

Cassell assumes it is enough under rule 4.413(c)(2)(B) that he was motivated by a need for money to support his addiction, but he cites no cases to this effect and ignores one we have found to the contrary, which states: “Defendant asserts, without authority, his drug and alcohol addictions qualify as facts which may indicate an unusual case, i.e., psychological problems.” (*People v. Serrato, supra*, 201 Cal.App.3d at p. 763 [citing former rule 416(e), now rule 4.413(c)(2)(B)].) Cases have also rejected that notion in construing similar language of rule 4.423(b)(2)—that it is a mitigating circumstance if the defendant was “suffering from a mental or physical condition that significantly reduced culpability for the crime.” Cases have consistently rejected addiction as mitigating when, as here, it did not appear to reduce the defendant’s lucidity or ability to act with planning or sophistication at the time of the crime. (*People v. Reyes* (1987) 195 Cal.App.3d 957, 961; *People v. Reid* (1982) 133 Cal.App.3d 354, 370-371; *People v. Bejarano* (1981) 114 Cal.App.3d 693, 706-708; *People v. Lambeth* (1980) 112 Cal.App.3d 495, 500.)

Alternatively, even if the court did deem Cassell’s drug addiction to be an *unusual circumstance* under rule 4.413(c)(2)(C), this did not compel a finding that it was one that made a grant of probation in “the interests of justice” (§ 462, subd. (a)). (*Stuart, supra*, 156 Cal.App.4th at p. 178.) For many of the same reasons just discussed, there was no

abuse of discretion in denying eligibility. This leaves no need to consider whether the court's negative suitability finding was an abuse of discretion.

Consecutive Terms

In selecting all consecutive sentences at the June hearing, Judge Medvigy reasoned that, while the nine residential burglaries were committed “within a relatively brief period of time, less than two months,” they were nonetheless “at different times and places,” thus invoking—as had the report—rule 4.425(a)(3): “The crimes were committed at different times or separate places, rather than being committed so closely in time and place as to indicate a single period of aberrant behavior.”

In later modifying the sentence at the October hearing to run the count IX and X terms concurrent, the judge was obviously torn about whether to modify at all, saying: “There was sophistication. There were burglaries in some cases every day that clearly were planned, where you have a crew that you were working, and there was high value of property taken. It is kind of complaining well, I don't want to pay too big a bill for my crimes. You know, I don't know what to say about that.”

The judge added, responding in part to defense arguments about other sentences offered for comparison, and prison being harsh: “[B]ecause of the number of them, the fact that they were relatively during a short period of time, and that you were prolific as a burglar and hurt so many people very deeply, you know, ultimately the sentence I gave you was certainly in the fair balancing . . . that I gave you almost half of what the law requires or would presume. Nevertheless, in light of the property crimes, the fact that no one was hurt, you are not that young, you are fairly youthful, you could still be able to get your life back, but you are not like an 18-year-old, 19-year-old, 20-year-old, maybe you are acting that way, but you are in your thirties. Certainly that's not considered young. Nevertheless, I am going to modify the sentence in light of other sentencings that we've done for horrific crimes like this I have to send messages to other people. It is a general deterrent message as well as a specific deterrent to you. I'm not going to apologize for how awful prison is, because it is meant to be a deterrent. Hopefully . . .

while you are there you get as much help as you can, you get out and never do anything like this again, never drink and use drugs again, and never victimize anyone again.”

The judge concluded: “I’m going to modify the sentence. Count IX, Count X will run concurrent. I’ll simply state to bring it in line with other sentences as well as for pure compassion, the fact, as Counsel said, there doesn’t look like there was any brief, even brief period where you weren’t committing crimes. I’m, going to give you credit for the fact at least for these two [] counts it was a single period of ab[errant behavior]. So those two would result in a ten-year sentence. I’m not going to restate all of it. I’ll incorporate all my reasons and all the sentencing choices from the last sentencing date.”

Cassell’s attack on these combined rulings is astonishingly broad. He calls it an abuse of discretion that the judge “fail[ed] to determine that all of the burglaries, and not merely Counts [IX and X], were ‘committed so closely in time and place as to indicate a single period of aberrant behavior.’ (Rule 4.425(a)(3).)” Citing cases not about this rule, but about prohibited double punishment under section 654, he argues that there could be but one punishment because all of these burglaries, though separated by days or weeks, constituted a single course of conduct with a single objective—“to obtain enough money to support his substance abuse.” He insists that he had no opportunity to reflect between the burglaries because his “drug-addled, depressed state prevented him from engaging in such reflection” due to “injecting large quantities of Oxycontin daily and . . . abusing methamphetamine on a near-daily basis.” Then, cognizant that rule 4.425(b) states, with inapplicable exceptions, “[a]ny circumstances in aggravation or mitigation may be considered in deciding whether to impose consecutive rather than concurrent sentences,” Cassell serially attacks the aggravating factors cited by the court, conceding support for only one—that the crime involved “actual taking or damage of great monetary value” (rule 4.421(a)(9)).

We are unclear where Cassell thinks the record compels the view of himself as so “drug-addled” during the weeks of burglaries that he lacked the ability to reflect on them, and there is disturbing breadth to his view that one may be punished for only one crime under section 654, despite days and weeks of criminality, so long as the “objective” is to

support a drug habit (cf. *People v. Bradley* (1993) 15 Cal.App.4th 1144, 1157 [rejecting, as too broad and amorphous, “[w]rapping up separate acts within a course of illegal sexual conduct under the broad label of sexual gratification]). However, there is no need to decide those questions.

The double-punishment argument (not even acknowledged in the People’s briefing) is easily dispatched given that Cassell never raised the argument below. Rule 4.412(b), which Cassell overlooks, provides: “By agreeing to a specified prison term personally and by counsel, a defendant who is sentenced to that term or a shorter one abandons any claim that a component of the sentence violates section 654’s prohibition of double punishment, unless that claim is asserted at the time the agreement is recited on the record.” Our Supreme Court has upheld the rule’s validity and confirmed that it means what it says. (*People v. Hester* (2000) 22 Cal.4th 290, 293-295.) Cassell’s plea agreement, made personally and with counsel, was for a maximum potential prison sentence of 16 years, eight months. He raised no section 654 objection then, and is now estopped to complain that his sentence of 10 years violates section 654. (*Id.* at p. 295.)⁵

Cassell’s briefing against the court’s aggravating factors falls of its own weight, for he concedes support for the taking-of-great-value factor. “Only one criterion or factor in aggravation is necessary to support a consecutive sentence. [Citation.]” (*People v. Davis* (1995) 10 Cal.4th 463, 552.)

Also, we have already set out some of the court’s remarks about the burglaries showing planning and sophistication (rule 4.421(a)(8)), and find them supported. The court also reasoned: “I do see a lot of planning here, a lot of sophistication, not only in how you targeted the homes but also how you conducted burglaries, hitting specific rooms to find specific property, to get in and out as quickly as possible without being caught. [¶] . . . [¶] . . . You did target affluent and geographically isolated residences,

⁵ Another principle Cassell overlooks, in his quest for all-concurrent sentences, is that a violation of section 654 cannot be cured by running offending terms concurrent; they must be stayed. (*People v. Deloza* (1998) 18 Cal.4th 585, 591-592.)

cased them, knocked on doors before forcing entry, had people ostensibly watching the homes for when they were vulnerable. You did admit to concentrating on bedrooms, bathrooms of the residences so that you could go after jewelry and prescription medication. And also get your burglary committed quickly.” The court was not bound to view the measures Cassell took as designed to minimize harm, as Cassell would have it (rule 4.423(a)(6)); the same facts reasonably allow a contrary inference, that the measures were taken to minimize getting caught.

No abuse of discretion is shown in running terms consecutive.

DISPOSITION

The June 7, 2011, sentence, as modified on October 4 and 6, 2011, is affirmed.

Kline, P.J.

We concur:

Haerle, J.

Lambden, J.